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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.A., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.A.,

Defendant and Appellant.

D043813

(Super. Ct. No. J202955)

APPEAL from a judgment of the Superior Court of San Diego County, William H. Kennedy, Judge. Affirmed as modified.

The juvenile court entered true findings that A.A. had committed second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)) (count one), grand theft (Pen. Code, § 487, subd. (c)) (count two), and assault with a deadly weapon or by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)) (count three). It declared

him a ward and placed him on probation under home supervision. A.A. appeals, contending that the court erred by making true findings of both robbery and grand theft, because grand theft is a necessarily included offense of robbery and convictions for both offenses based on the same conduct are prohibited. The People properly concede the point.

BACKGROUND

Around 8:00 p.m. on October 7, 2003, five or six boys approached Irene Barajas on the street. One of the boys, A.A., asked her for \$5. The others surrounded her, blocking her way. A.A. told Barajas that if she did not give him money, he would cause her problems. He grabbed her by the neck, hit her on the head, and threw her to the ground. One of the boys took the workbag Barajas was carrying on her shoulder. The bag contained her uniform blouse, sandals, and a spray bottle. The property was worth about \$55. Barajas suffered a broken finger and an injured shoulder.

DISCUSSION

A defendant charged with both robbery and theft, based on the same conduct, may not be convicted of both offenses. (*People v. Ortega* (1998) 19 Cal.4th 686, 690, 694, 697-699) Here, the robbery count alleged that on October 7, 2003, A.A. took property from Barajas's person, possession, and immediate presence by means of force and fear. The grand theft count alleged that on the same date, he took property from her person. As described above, both offenses occurred as a single incident, with one item taken from one victim. The juvenile court therefore erred by entering true findings of both robbery and grand theft.

DISPOSITION

The judgment is modified by striking the true finding of grand theft (Pen. Code, § 487, subd. (c)) (count three). As so modified, the judgment is affirmed.

BENKE, J.

WE CONCUR:

HALLER, J.

AARON, J.